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20 **UNITED STATES DISTRICT COURT**  
21 **DISTRICT OF NEVADA**

22 MARK HUNT, an individual,  
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24 Plaintiff,  
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26 v.  
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28 ZUFFA, LLC d/b/a ULTIMATE  
FIGHTING CHAMPIONSHIP, a  
Nevada limited liability company;  
BROCK LESNAR, an individual;  
DANA WHITE, an individual; and  
DOES 1-50, inclusive,  
Defendants.

**Case No.: 2:17-cv-00085-JAD-CWH**

**MARK HUNT'S POINTS AND  
AUTHORITIES IN OPPOSITION TO  
DEFENDANT BROCK LESNAR'S  
THIRD REQUEST FOR JUDICIAL  
NOTICE PURSUANT TO FEDERAL  
RULES OF EVIDENCE RULE 201**

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1 Plaintiff, Mark Hunt (“Hunt”), respectfully requests that this Court deny Brock Lesnar’s  
 2 (“Lesnar”) Third Request for Judicial Notice of Exhibit “B” (Nevada State Athletic Commission  
 3 Sample Bout Agreement). This Court should exclude Lesnar’s extrinsic evidence because the  
 4 exhibit was not incorporated by reference, is not directly related to Hunt’s amended complaint,  
 5 and is neither publicly available nor capable of accurate and ready determination. This Court’s  
 6 consideration of Lesnar’s motion to dismiss Hunt’s complaint should be limited to the pleadings.

7 Hunt has no objection to the consideration of Exhibit A, the hearing transcript from May  
 8 22, 2017, on Defendants’ first motion to dismiss, for the limited purpose of convenience to the  
 9 Court and parties’ reference. However, the hearing constituted only the argument of the parties  
 10 and the Court’s determinations regarding the original complaint. Clearly, Exhibit A does not  
 11 affect the outcome of Lesnar’s motion to dismiss Hunt’s first amended complaint. In fact, Exhibit  
 12 A tends to show that any prior deficiency has been cured.

13 Finally, Hunt notes Lesnar’s request for judicial notice is futile, regardless of the Court’s  
 14 consideration of Exhibit B. The plain language of the document establishes that the State of  
 15 Nevada, and not Lesnar, may raise the express assumption of the risk defense.

## 16 I.

### 17 LEGAL STANDARD

18 “[A] district court may not consider any material beyond the pleadings in ruling on a Rule  
 19 12(b)(6) motion.” *Lee v. City of Los Angeles*, 250 F.3d 668 (9th Cir. 2001) (citing *Branch v.*  
 20 *Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994)); *see Cervantes v. City of San Diego*, 5 F.3d 1273, 1274  
 21 (9th Cir. 1993) (holding when the legal sufficiency of a complaint’s allegation is tested by a  
 22 12(b)(6) motion, “review is limited to the complaint.”). An exception to this general rule is the  
 23 doctrine of judicial notice pursuant to Federal Rule of Evidence 201. A court may take judicial  
 24 notice of “matters of public record” without converting a motion to dismiss into a motion for  
 25 summary judgment, but may not take judicial notice of a fact that is “subject to reasonable  
 26 dispute.” Fed. R. Evid. 201(b); *Lee*, 250 F.3d at 689 (citing *MGIC Indem. Corp. v. Weisman*, 803  
 27 F.2d 500, 204 (9th Cir. 1986)).

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1 **II.**

2 **ARGUMENT**

3 **Judicial Notice of Exhibit B Should be Denied or Extremely Limited**

4 Lesnar asks the Court to go beyond the pleadings to a bout agreement not contained or  
 5 even referenced in Hunt's complaint. Exhibit B purports to be a Nevada State Athletic  
 6 Commission Sample Bout Agreement. The title alone is instructive here. It is a "sample"  
 7 agreement. It is not executed by Hunt, UFC, or Lesnar. However, Lesnar not only asks the Court  
 8 to acknowledge the existence of the Sample Bout Agreement, he asks the Court to pretend it is a  
 9 fully executed copy, and then pretend Lesnar would be a party to even an executed copy of the  
 10 agreement. That is, Lesnar asks the Court to consider one document for purposes of taking  
 11 judicial notice (a sample bout agreement), but consider another document for its substantive  
 12 analysis (a fully executed bout agreement). Indeed, if the agreement were "publicly available  
 13 and capable of accurate and ready determination," then Lesnar would have attached an executed  
 14 copy.

15 Notably, the bout agreement Lesnar seeks to introduce is the Nevada State Athletic  
 16 Commission's Official Bout Agreement. This is *not* referenced in any manner in Hunt's  
 17 complaint, which refers and incorporates only the UFC 200 Bout agreement. To clarify any  
 18 potential confusion, both documents are coincidentally titled "Exhibit B." Exhibit B to Hunt's  
 19 complaint is the UFC 200 Bout Agreement; Lesnar's Exhibit B is a different document, which  
 20 was neither incorporated, referenced or relied upon in Hunt's complaint. Therefore, the Court  
 21 should decline to consider the Sample Bout Agreement.

22 This Court should deny Lesnar's request for judicial notice of Exhibit B, however, to the  
 23 extent the Court takes judicial notice of Exhibit B, it should be limited to the mere fact that the  
 24 document exists, because the contents and interpretation of the document is highly disputed. *See*  
 25 *Montana Dep't of Revenue v. Blixseth*, No. 2:13-CV-01324-JAD, 2016 WL 1183084, at \*2 (D.  
 26 Nev. Mar. 28, 2016) (denying request for judicial notice to the extent it seeks judicial notice of  
 27 the truth of its contents); *see also Carrillo v. Gillespie*, No. 2:12-CV-02165-JAD, 2014 WL  
 28 1307454, at \*7 (D. Nev. Mar. 28, 2014) (holding Court could not take judicial notice of the truth

1 or perjury regarding contents of police officer's sworn statement, because it was "subject to  
2 reasonable dispute" (interpreting Fed. R. Evid. 201)).

3 **III.**

4 **CONCLUSION**

5 For the above reasons, Hunt respectfully requests that the Court deny Lesnar's request for  
6 judicial notice of Exhibit B.

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8 DATED: June 30, 2017

HIGGS FLETCHER & MACK LLP

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10 By: s:/CHRISTINA M. DENNING  
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**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5 and the Court's Local Rules, the undersigned hereby certifies that on this day, June 30, 2017, a copy of the foregoing document entitled **MARK HUNT'S POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT BROCK LESNAR'S THIRD REQUEST FOR JUDICIAL NOTICE PURSUANT TO FEDERAL RULES OF EVIDENCE RULE 201** was filed and served through the Court's electronic filing system (CM/ECF) upon all registered parties and their counsel.

/s/ Melodee Lutjens

Melodee Lutjens

An employee of Higgs Fletcher & Mack LLP